

Revised 3/00

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK**

**FORM TO BE USED IN FILING A COMPLAINT  
UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. § 1983  
(Prisoner Complaint Form)**

07 07 05 01

**1. CAPTION OF ACTION**

**A. Full Name And Prisoner Number of Plaintiff:** **NOTE:** *If more than one plaintiff files this action and seeks in forma pauperis status, each plaintiff must submit an in forma pauperis application and a signed Authorization or the only plaintiff to be considered will be the plaintiff who filed an application and Authorization.*

Ronald Davidson

-vs-

**B. Full Name(s) of Defendant(s)** **NOTE:** *Pursuant to Fed.R.Civ.P. 10(a), the names of all parties must appear in the caption. The court may not consider a claim against anyone not identified in this section as a defendant. If you have more than six defendants, you may continue this section on another sheet of paper if you indicate below that you have done so.*

1. Wesley Canfield, M.D.

2. Calvin West

3. Glenn Goord

4. Lester Wright, M.D.

5. Anthony J. Annucci

6. John Does 1-10

7. Joseph Hatef, DPM (contract podiatrist)

**2. STATEMENT OF JURISDICTION**

This is a civil action seeking relief and/or damages to defend and protect the rights guaranteed by the Constitution of the United States. This action is brought pursuant to 42 U.S.C. § 1983. The Court has jurisdiction over the action pursuant to 28 U.S.C. §§ 1331, 1343(3) and (4), and 2201.

**3. PARTIES TO THIS ACTION**

**PLAINTIFF'S INFORMATION** **NOTE:** *To list additional plaintiffs, use this format on another sheet of paper.*

Name and Prisoner Number of Plaintiff: Ronald Davidson #76A1166

Present Place of Confinement & Address: Shawangunk Correctional Facility  
P.O. Box 700

Wallkill, NY 12589-0700

Name and Prisoner Number of Plaintiff: \_\_\_\_\_

Present Place of Confinement & Address: \_\_\_\_\_

**DEFENDANT'S INFORMATION NOTE:** *To provide information about more defendants than there is room for here, use this format on another sheet of paper.*

Name of Defendant: Wesley Canfield, M.D.

(If applicable) Official Position of Defendant: Facility Health Services Director, Elmira C.F.

(If applicable) Defendant is Sued in X Individual and/or X Official Capacity

Address of Defendant: Elmira Correctional Facility, P.O. Box 500, Elmira, NY  
14902-0500

Name of Defendant: Calvin West

(If applicable) Official Position of Defendant: Superintendent, Elmira C.F.

(If applicable) Defendant is Sued in X Individual and/or X Official Capacity

Address of Defendant: Elmira Correctional Facility, P.O. Box 500, Elmira, NY  
14902-0500

Name of Defendant: Glenn Goord

(If applicable) Official Position of Defendant: former commissioner, NYS Dept. of Correctional Services

(If applicable) Defendant is Sued in X Individual and/or X Official Capacity

Address of Defendant: c/o Anthony J. Annucci, Esq., Counsel and Deputy  
Commissioner, NYS Dept. of Correctional Services, 1220 Washington Avenue,  
Albany, NY 12226

#### **4. PREVIOUS LAWSUITS IN STATE AND FEDERAL COURT**

A. Have you begun any other lawsuits in state or federal court dealing with the same facts involved in this action? Yes \_\_\_\_\_ No X

If Yes, complete the next section. NOTE: *If you have brought more than one lawsuit dealing with the same facts as this action, use this format to describe the other action(s) on another sheet of paper.*

2(A)

Defendants' Information Continued

---

Lester Wright, M.D.  
Chief Medical Officer  
NYS Dept. of Correctional Services  
1220 Washington Avenue  
Albany, NY 12226

Anthony J. Annucci, Esq.  
Counsel and Deputy Commissioner  
NYS Dept. of Correctional Services  
1220 Washington Avenue  
Albany, NY 12226

John Does 1-10 refers to as yet unknown employees of the NYS Dept. of Correctional Services ("DOCS") in the classification and movement unit(s) or other units that played a role in approving and/or carrying out my transfer from Elmira Correctional Facility on or about 24 December 2004 and their actions leading up to said transfer. When their identities are ascertained on discovery I will so advise the Court.

1. Name(s) of the parties to this other lawsuit:

Plaintiff(s): \_\_\_\_\_

Defendant(s): \_\_\_\_\_

2. Court (if federal court, name the district; if state court, name the county): \_\_\_\_\_

3. Docket or Index Number: \_\_\_\_\_

4. Name of Judge to whom case was assigned: \_\_\_\_\_

5. The approximate date the action was filed: \_\_\_\_\_

6. What was the disposition of the case?

• Is it still pending? Yes \_\_\_\_\_ No \_\_\_\_\_

• If not, give the approximate date it was resolved. \_\_\_\_\_

• Disposition (check the boxes which apply):

☐ Dismissed (check the box which indicates why it was dismissed):

☐ By court *sua sponte* as frivolous, malicious or for failing to state a claim upon which relief can be granted;

☐ By court for failure to exhaust administrative remedies;

☐ By court for failure to prosecute, pay filing fee or otherwise respond to a court order;

☐ By court due to your voluntary withdrawal of claim;

☐ Judgment upon motion or after trial entered for

☐ plaintiff

☐ defendant.

B. Have you begun any other lawsuits in federal court which relate to your imprisonment?

Yes X No \_\_\_\_\_

If Yes, complete the next section. NOTE: *If you have brought more than one other lawsuit dealing with your imprisonment, use this same format to describe the other action(s) on another sheet of paper.*

1. Name(s) of the parties to this other lawsuit:

Plaintiff(s): Ronald Davidson

Defendant(s): Nicholas Brezniak, et. al.

2. District Court: U.S. District Court, Western District of New York
3. Docket Number: 95-CV-204C
4. Name of District or Magistrate Judge to whom case was assigned: Hon. John T. Curtin
5. The approximate date the action was filed: \_\_\_\_\_
6. What was the disposition of the case?
- Is it still pending? Yes X No \_\_\_\_\_
  - If not, give the approximate date it was resolved. \_\_\_\_\_
  - Disposition (check the boxes which apply):
    - ☐ Dismissed (check the box which indicates why it was dismissed):
      - ☐ By court *sua sponte* as frivolous, malicious or for failing to state a claim upon which relief can be granted;
      - ☐ By court for failure to exhaust administrative remedies;
      - ☐ By court for failure to prosecute, pay filing fee or otherwise respond to a court order;
      - ☐ By court due to your voluntary withdrawal of claim;
    - ☐ Judgment upon motion or after trial entered for
      - ☐ plaintiff
      - ☐ defendant.

---

### **5. STATEMENT OF CLAIM**

For your information, the following is a list of some of the most frequently raised grounds for relief in proceedings under 42 U.S.C. § 1983. (This list does not include all possible claims.)

- |                    |                        |                               |
|--------------------|------------------------|-------------------------------|
| • Religion         | • Access to the Courts | • Search & Seizure            |
| • Free Speech      | • False Arrest         | • Malicious Prosecution       |
| • Due Process      | • Excessive Force      | • Denial of Medical Treatment |
| • Equal Protection | • Failure to Protect   | • Right to Counsel            |

Please note that it is not enough to just list the ground(s) for your action. You must include a statement of the facts which you believe support each of your claims.

**Fed.R.Civ.P. 8(a)** states that a pleading must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." "The function of pleadings under the Federal Rules is to give fair notice of the claim asserted. Fair notice is that which will enable the adverse party to answer and prepare for trial,

4(A)

Davidson v. Bennis, et. al., Docket No. 95-CV-154C

U.S. District Court, W.D.N.Y.,

Before Hon. John T. Curtin

Status: Pending

---

Davidson v. Uday K. Desai, M.D., et. al.

U.S. District Court, W.D.N.Y.

Docket No. 03-CV-0121S

Status: Pending

Before Hon. William Skretny and U.S. Magistrate Judge Foschio

(In addition to my W.D.N.Y. actions I have unrelated actions pending in the S.D.N.Y. and N.D.N.Y. federal courts)

allow the application of res judicata, and identify the nature of the case so it may be assigned the proper form of trial." Simmons v. Abruzzo, 49 F.3d 83, 86 (2d Cir. 1995).

Fed.R.Civ.P. 10(b) states that "[a]ll averments of claim ... shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a single set of circumstances."

---

**A. FIRST CLAIM:** On (date of the incident) In or about June 2004,

defendant (give the name and position held of each defendant involved in this incident) \_\_\_\_\_

Wesley Canfield, M.D., and the other named defendants, as reprisals for my filing Davidson v. Desai, et. al., 03-CV-0121S in this courthouse, placed me in for a transfer from Elmira Correctional Facility (the workplace of

did the following to me (briefly state what each defendant named above did): defendants to another prison. Canfield, as Elmira's medical director and the other named defendants, knew that said transfer would interfere with scheduled bilateral foot surgery and urological surgery. In fact, Canfield advised

me that he was cancelling the surgeries because he didn't want me "hanging around" Elmira prison to recuperate from said surgeries and that he wanted me to be transferred from Elmira prison as asxsoon as possible. Dr.

Canfield advised me of his plans in an extremely irate fashion soon after he and the other named defendants were served with the complaint in or about June 2004. I immediately grieved his retaliatory plans as soon as he advised me of them, and appealed the grievance to the CORC level, to no avail. The constitutional basis for this claim under 42 U.S.C. § 1983 is: \_\_\_\_\_

Reprisals for my use of free speech and access to the courts for redress and denial of due process and equal protection of the law; denial of medical treatment. The relief I am seeking for this claim is (briefly state the relief sought): \_\_\_\_\_

#### **Exhaustion of Administrative Remedies**

According to 42 U.S.C. § 1997e(a), "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prison er confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

Did you grieve and/or appeal this claim: Yes X No \_\_\_\_\_

If your answer is yes, state the result: My grievance was denied

Did you appeal that decision: Yes X No       

If your answer is yes, state the result: CORC (the DOCS' highest grievance level)

denied my requested relief  
*Attach any documents which indicate that you have*  
*exhausted your administrative remedies regarding this claim.*

If your answer is no, state why you did not:       

Photocopies of the grievances <sup>are</sup> ~~is~~ not available at present. Will send

them to the Court under separate cover when they become available, <sup>re:</sup>

GRIEVANCE NOS.: EL-27-014-04, ~~EL-27-014-04~~, EL-26765-04, EL-26-896-04,  
EL-27061-04, EL-26647-04

**B. SECOND CLAIM:** On (date of the incident) In or about July 2004 and thereafter in

defendant (give the **name and position held of each defendant** involved in this incident) 2004,  
Wesley Canfield, M.D., and the other named defendants, cancelled scheduled

bilateral foot surgery to be performed by Dr. Joseph Hatef, a podiatrist

at Steuben Podiatry Assoc., LLP. 154 East Second Street, Corning, N.Y. 14830

did the following to me (briefly state what each defendant named above did): I fully set forth

the details of this retaliatory act in a letter to Timothy J. Dentry,

Administrator of Corning Hospital, 176 Denison Parkway E., Corning, NY

14830, dated 24 July 2004 (with an attachment of grievance no. EL-26-765-

04, and mailed copies to Anthony J. Annucci, Esq., Wesley Canfield, Dr.

Joseph Hatef, et. al. Named defendants also cancelled urological surgery

scheduled to be performed by Alan Angell, M.D., a urological surgeon in

Elmira, N.Y. Up until the time of my transfer out of Elmira prison on or

about 24 December 2005 I repeatedly asked Dr. Canfield and the other named

defendants to re-schedule the cancelled surgeries, to no avail. They had

opportunities to re-schedule the surgeries but refused to do so at all turns.  
The constitutional basis for this claim under 42 U.S.C. § 1983 is:

As set forth in the First Claim/Cause of Action

The relief I am seeking for this claim is (briefly state the relief sought): 1) A jury trial;

2) In forma pauperis status; 3) Assignment of pro bono counsel; 4) Injunctive

relief to receive the cancelled foot surgeries; 5) Compensatory and  
punitive damages in an amount that a jury feels is appropriate to vindicate  
my rights and to deter the defendants and their ilk from committing further  
and future wrongful and illegal acts of this nature.

See Page 6(a) for further Claims/Causes of Action



Page 6(a)

Statement of Claim/Causes of Action (Continued)

---

Third Claim/Cause of Action

I was examined by gastroenterologists at SUNY Upstate Medical Center at Syracuse and had a colonoscopy performed. Amongst the findings were diverticulosis. The gastroenterologists ("G.I." specialists) ordered a high fiber diet.

At first, Dr. Canfield "honored" that order and I was provided with an ostensible "high fiber" diet consisting of whole wheat bread. All other items on the so-called "high-fiber diet" were the same as the regular diet, i.e., low in fiber.

In fact, Dr. Canfield in reality never honored the order and never saw to it that I was provided with a high-fiber diet. He then made matters worse by removing me from the so-called "high-fiber diet" which at least provided whole wheat bread, because, in his words, "it costs too much." Dr. Canfield claimed that the cost of the whole wheat bread was too much and that it was being stolen by messhall workers (both civilian and prisoners). I pointed out to him that the cost of the bread and any alleged thefts of it weren't his concern and that it was in violation of federal case law in this Circuit to deny me an ordered and needed diet for medical needs. He wasn't impressed by my statements and repeated a favorite phrase of his and the other named defendants, "sue me."

To date, I continue to be denied a high-fiber diet by Dr. Lester Wright and the commissioner of the Department of Correctional Services.

Fourth Claim/Cause of Action

Prior to my transfer from Elmira prison on or about 24 December 2004, I was admitted to the SUNY Binghamton University college course at Elmira. As a result, per the memorandum of K. Gould, Education Supervisor, dated 01 October 2004, addressed to me, I was supposed to be put on a "hold" to prevent any non-emergent transfers that would interfere with said program. Such emergent transfers would include medical or SHU reasons. Those factors did not apply to the complained of transfer. As a result of the transfer, the college course which was in progress when I was transferred was interfered with and thus denied to me. I wrote to defendant Anthony J. Annucci, Esq., about this on 03 October 2004 and advised him of the "hold" and the planned retaliatory transfer. I further advised that the hold was supposed to be in place until approximately May of 2005. and asked him to take action, i.e., see to it that the cancelled surgeries were re-scheduled. This was to no avail. Also, despite being on notice of the educational department "hold" for SUNY Binghamton University course, he took no action to see to it that I was allowed to complete said course. Thus, in addition to being denied the aforementioned surgeries, Anthony Annucci, Esq., et. al., denied me the college course I was admitted to and enrolled in as reprisals for my bringing suit in Desai, 03-CV-0121S.

**Exhaustion of Administrative Remedies**

According to 42 U.S.C. § 1997e(a), "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

Did you grieve and/or appeal this claim: Yes X No \_\_\_\_\_

If your answer is yes, state the result: My grievance was denied (several grievances)

Did you appeal that decision: Yes X No \_\_\_\_\_

If your answer is yes, state the result: My appeals to CORC were all denied (See pg.6)

*Attach any documents which indicate that you have exhausted your administrative remedies regarding this claim.*

If your answer is no, state why you did not: \_\_\_\_\_

**If you have additional claims, use the above format to set them out on additional sheets of paper.**

**6. RELIEF SOUGHT**

*Summarize the relief requested by you in each statement of claim above.*

As set forth on page 6, bottom, i.e., jury trial, assignment of counsel,  
poor person status, injunctive relief, compensatory and punitive damages in an  
amount to vindicate my rights and to deter future abuses.

Do you want a jury trial? Yes X No \_\_\_\_\_

**I declare under penalty of perjury that the foregoing is true and correct.**

Executed on 16 July 2007  
(date)

**NOTE: Each plaintiff must sign this complaint and must also sign all subsequent papers filed with the Court.**

Kenneth Davidson

Signature(s) of Plaintiff(s)

100

3300

Clark of Court  
U.S. District Court, W.D.N.Y.  
68 Court Street  
Buffalo, NY 14202

# NOV 19 1964



Legal Mail